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STEPHEN D. RIDEN, (TO BE ADMITTED *PRO HAC VICE*), SRIDEN@FOLEY.COM

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

GREGORY SHADE,

Plaintiff,

vs.

DANIEL PATRICK GORMAN, individually
and doing business as CHARLIE SEVEN
FILMS, LLC, FRAMEBIRD MEDIA, CHIP R.
BEASLEY, and ANDREW ELLIS,

Defendants.

Case No: 3:08-cv-03471-SI

***EX PARTE* MOTION TO EXTEND
TIME TO RESPOND TO THE
COMPLAINT**

Judge: Hon. Susan Illston
Dept: Courtroom 10, 19th Floor

1 Pursuant to Federal Rule of Civil Procedure 6(b) and Northern District of California
2 Local Rules 6-3, 7-10 and 7-11, Defendant Andrew Ellis requests a 21-day enlargement of time,
3 until September 8, 2008, to respond to Plaintiff's complaint. Under the current schedule, an
4 answer or response is due on August 18, 2008. See F.R.C.P. 12(a)(1)(A)(i) (20 days from date
5 of service, July 28, 2008, not including weekends). An extension of time to respond is necessary
6 because Mr. Ellis recently obtained pro bono counsel who will require additional time to
7 determine whether a Rule 12 motion is appropriate, and if so, to prepare the same. As of
8 August 14, 2008, Plaintiff's counsel had not yet granted Defendant's repeated requests for an
9 extension.

10 Under Federal Rule of Civil Procedure 6(b), this Court may grant an extension of time *ex*
11 *parte*. F.R.C.P. 6(b) ("with or without motion or notice"); see also, SCHWARZER *ET AL*, CAL.
12 PRAC. GUIDE: FED. CIV. PRO. BEFORE TRIAL (The Rutter Group 2008) ("On a showing of 'good
13 cause,' the court may sign an ex parte order extending the time within which any act is required
14 or allowed to be done...").

15 Good cause for an extension is present because counsel at Foley & Lardner LLP agreed
16 to represent Mr. Ellis on a pro bono basis last week and is still completing its review of the
17 complaint and conducting factual inquiry. Counsel's initial review indicates possible grounds
18 for a motion under Federal Rule of Civil Procedure 12. The current August 18, 2008 due date
19 would make it impracticable to complete such a motion. See attached Declaration of Stephen
20 Riden ("Riden Decl.") at ¶ 2.

21 Mr. Ellis' counsel promptly contacted Plaintiff's counsel on August 11, 2008 asking for
22 an extension of time. In response, Plaintiff's counsel stated that he is "not authorized to respond
23 to [the] request." Riden Decl. at ¶ 3. On August 13, 2008, Mr. Ellis' counsel spoke to Plaintiff's
24 counsel by phone to determine whether an extension could be granted, but Plaintiff's counsel
25 stated that he was not authorized to grant any extensions and that he could not reach his client,
26 who was out of the country, to discuss this matter. Riden Decl. at ¶ 4. Plaintiff's counsel
27 explained that he would try again to reach his client and then phone Mr. Ellis' counsel to provide
28 a definitive response to Mr. Ellis' request for an extension. Riden Decl. at ¶ 5.

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Defendants.

Case No: 3:08-cv-03471-SI

**DECLARATION OF STEPHEN RIDEN IN
SUPPORT OF *EX PARTE* MOTION
TO EXTEND TIME TO RESPOND TO
THE COMPLAINT**

Judge: Hon. Susan Illston
Dept: Courtroom 10, 19th Floor

1 I, Stephen Riden, declare as follows:

2 1. I am an attorney duly admitted to practice in the Commonwealth of Massachusetts
3 and am an attorney at the law firm of Foley & Lardner LLP, counsel for Defendant Andrew Ellis
4 in the above-captioned matter. I have personal knowledge of the matters stated herein, and if
5 called to testify, could and would testify competently thereto.

6 2. Counsel at Foley & Lardner LLP agreed to represent Mr. Ellis on a pro bono basis
7 last week and is still completing its review of the Complaint and conducting factual inquiry.
8 Counsel's initial review indicates possible grounds for a motion under Rule 12 of the Federal
9 Rules of Civil Procedure. The current August 18, 2008, due date would make it impracticable to
10 complete such a motion.

11 3. Mr. Ellis' counsel contacted Plaintiff's counsel on August 11, 2008 asking for an
12 extension of time. In response, Plaintiff's counsel stated that he is "not authorized to respond to
13 [the] request." A true and correct copy of the email exchange between Plaintiff's counsel and
14 Mr. Ellis' counsel is attached hereto as Exhibit A.

15 4. On August 13, 2008, Mr. Ellis' counsel spoke to Plaintiff's counsel by phone to
16 determine whether an extension could be granted, but Plaintiff's counsel reiterated that he was
17 not authorized to grant any extensions and stated that he could not reach his client, who was out
18 of the country, to discuss this matter.

19 5. Plaintiff's counsel explained that he would try again to reach his client and then
20 phone Mr. Ellis' counsel to provide a definitive response to Mr. Ellis' request for an extension.

21 6. As of 11:00 a.m. PDT on August 14, 2008, Plaintiff's counsel had not yet replied
22 regarding Mr. Ellis' requested extension.

23 7. In none of these exchanges did Plaintiff's counsel cite any prejudice from an
24 extension.

25 8. There have been no previous time modifications in this action and the requested
26 time modification would have no other effect on the schedule for this case.

27 9. I declare under penalty of perjury that the foregoing is true and correct. Executed
28

DECLARATION OF STEPHEN RIDEN RE *EX PARTE* MOTION TO EXTEND
TIME TO RESPOND TO COMPLAINT
CASE NO. 3:08-cv-03471-SI

on August 14, 2008, in Boston, Massachusetts.

/s/ Stephen Riden

Stephen Riden

Exhibit A

Riden, Stephen D.

From: Riden, Stephen D.
Sent: Wednesday, August 13, 2008 1:08 PM
To: Steven L. Hammond
Subject: RE: Shade v. Gorman, et al.: Response to complaint

Mr. Hammond,

Please let me know if you are willing to grant the courtesy of an extension to Mr. Ellis, or whether motion practice will be necessary. Please be advised that I believe in extending courtesies to opposing counsel and routinely grant such extensions to attorneys who request them from me.

Regards

Stephen D. Riden
Foley & Lardner LLP
www.foley.com

From: Steven L. Hammond [mailto:slh@hammondlawsf.com]
Sent: Tuesday, August 12, 2008 2:30 PM
To: Riden, Stephen D.
Subject: RE: Shade v. Gorman, et al.: Response to complaint

Stephen,

I am not authorized to respond to your request other than to state that I cannot determine Mr. Shade's position at this time and on that basis cannot presently grant an extension.

Regards,
Steve Hammond

Steven L. Hammond
Hammond Law
One Ferry Building, Suite 350
San Francisco, CA 94111

Tel: 415-955-1915
Fax: 415-955-1976

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8/14/2008

From: Riden, Stephen D. [mailto:SRiden@foley.com]
Sent: Tuesday, August 12, 2008 11:08 AM
To: slh@hammondlawsf.com
Subject: RE: Shade v. Gorman, et al.: Response to complaint

Steven,

Have you had a chance to consider my request below?

Thanks

Stephen D. Riden
Foley & Lardner LLP
www.foley.com

From: Riden, Stephen D.
Sent: Monday, August 11, 2008 3:56 PM
To: 'slh@hammondlawsf.com'
Subject: RE: Shade v. Gorman, et al.: Response to complaint

Steven,

As we discussed, last week I reached out to the other defendants in this action and on Friday I spoke with their attorney. He is going to speak with his clients and get back to me with his views on your settlement terms.

Since all of the parties are cooperating to determine whether there is a possibility of settlement at this stage, I respectfully request additional time to respond to the complaint. In this regard, I am requesting an extension to September 1, 2008, to answer or otherwise respond to the complaint on behalf of my client, Andrew Ellis. Will you agree to such an extension?

I will touch base with you as soon as I speak with the attorney for the co-defendants.

Thank you for your courtesy in this matter.

Regards

Stephen D. Riden
Foley & Lardner LLP
www.foley.com

From: Riden, Stephen D.
Sent: Wednesday, August 06, 2008 5:06 PM
To: slh@hammondlawsf.com
Subject: Shade v. Gorman, et al.: Contact Info.

It was a pleasure to speak with you. My contact information is below. And my direct dial is

617-342-4078.

Regards

Stephen D. Riden
Foley & Lardner LLP
111 Huntington Avenue
Boston, MA 02199
(617) 342-4000
www.foley.com

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BEASLEY, and ANDREW ELLIS,

Defendants.

Case No: 3:08-cv-03471-SI

**[PROPOSED] ORDER GRANTING
EXTENSION OF TIME TO RESPOND TO
THE COMPLAINT**

Judge: Hon. Susan Illston
Dept: Courtroom 10, 19th Floor

1 Having reviewed Defendant Andrew Ellis' submissions and GOOD CAUSE appearing
2 therefor, IT IS HEREBY ORDERED THAT:

3 Defendant Andrew Ellis' time to respond to the Complaint is enlarged until
4 September 8, 2008.

5
6 Dated: _____, 2008

7 Honorable Susan Illston
8 United States District Judge
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